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**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

RANDY BATEN, on behalf of himself,
 and all others similarly situated,

Plaintiff,

v.

MICHIGAN LOGISTICS, INC. d/b/a
 DILIGENT DELIVERY SYSTEMS,
 CALIFORNIA LOGISTICS, INC. d/b/a
 DILIGENT DELIVERY SYSTEMS,
 WESTERN DELIVERY & LOGISTICS,
 LLC, d/b/a DILIGENT DELIVERY
 SYSTEMS, and LARRY BROWNE,

Defendants.

Case No. CV 18-10229-GW-MRWx

**ORDER AND JUDGMENT
 GRANTING FINAL APPROVAL
 OF CLASS ACTION
 SETTLEMENT, REQUEST FOR
 ENHANCEMENT PAYMENT,
 AND MOTION FOR
 ATTORNEYS' FEES AND COSTS**

Hearing Date: Thursday, March 9,
 2023
 Time: 8:30 a.m.
 Courtroom: 9D

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1 Plaintiff Randy Baten, individually and on behalf of the Settlement Class, moved
2 the Court for final approval of a \$1,750,000 non-reversionary, class action settlement
3 of this wage and hour case against Defendants Michigan Logistics, Inc., California
4 Logistics, Inc. (“CLI”), Western Delivery & Logistics, Inc. (“WD&L”), and Larry
5 Browne (“Defendants”), for approval of a \$10,000 Enhancement Payment, and for
6 approval of Class Counsel’s attorneys’ fees and costs.

7 The Court granted Plaintiff’s unopposed motion for preliminary approval on
8 December 6, 2022. ECF No. 146. On March 8, 2023, the Court issued a tentative ruling
9 granting in full Plaintiff’s Motions for Final Approval of Class Action Settlement, and
10 for Attorneys’ Fees and Costs. ECF No. 155. The Court conducted a final fairness
11 hearing on March 9, 2023, at which counsel for the parties appeared and the Court
12 adopted its tentative ruling as its Final Ruling. ECF No. 156.

13 Having read and considered the unopposed moving papers, having conducted a
14 final fairness hearing as required by Federal Rule of Civil Procedure 23(e), and good
15 cause appearing, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as
16 follows:

- 17 1. The terms and phrases used in this Order shall have the same meaning as
18 ascribed to them in the Class Action Settlement Agreement and Release
19 (“Settlement Agreement”).
- 20 2. The Court has subject matter jurisdiction over the action under 28 U.S.C.
21 1332(d)(2), the Class Action Fairness Act, along with federal question
22 jurisdiction over Plaintiff’s Fair Labor Standards Act claim. The Court has
23 personal jurisdiction over all Defendants.
- 24 3. The certified settlement class under Federal Rule of Civil Procedure 23(c)
25 consists of the members of the class that the Court certified by order, dated
26 October 25, 2021, ECF No. 111, who did not exclude themselves from the
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1 settlement, and who worked at least one workday with Defendants between
2 November 2, 2014 and May 31, 2022 as reflected in Defendants' records.
3 There are 82 Settlement Class Members.

4 4. The Court finds that no Settlement Class Member objected to the
5 settlement or requested exclusion.

6 5. For the reasons set forth in the Court's December 6, 2022 preliminary
7 approval order and its March 8, 2023 tentative ruling, the Court finds that
8 the applicable requirements of Federal Rule of Civil Procedure 23 have
9 been satisfied with respect to the Settlement Class and the proposed Class
10 Settlement. The Court finds that the settlement is fair, reasonable, and
11 adequate, and warrants final approval.

12 6. The notice given to Settlement Class Members fully and accurately
13 informed the Settlement Class Members of all material elements of the
14 proposed Class Settlement and of their opportunity to object or opt-out and
15 was the best notice practicable under the circumstances. A full opportunity
16 was afforded to Settlement Class Members to participate in the hearing.
17 Accordingly, the Court determines that all Settlement Class Members who
18 did not timely and properly exclude themselves are bound by this Order
19 and Judgment.

20 7. The Court approves Class Counsel's request for an award of attorneys'
21 fees of \$583,333.33 or one-third of the Maximum Settlement Amount, and
22 for reimbursement of their actual out-of-pocket litigation costs and
23 expenses of \$42,126.47, to be paid from the Maximum Settlement
24 Amount. Counsel performed a significant amount of work and did so
25 successfully. Their expenses were reasonably incurred and represent
26 services that are customarily billed to clients.

- 1 8. The Court approves the Plaintiff's request for a \$10,000 Enhancement
2 Payment. The Plaintiff – the sole named plaintiff throughout this case –
3 provided services and efforts over the course of four years to achieve the
4 ends his lawsuit desired.
- 5 9. The Court approves the Settlement Administrator's payment of up to
6 \$26,000 in Administrative Costs to administer the Settlement through its
7 conclusion, including disbursement of the Maximum Settlement Amount
8 and all associated tax reporting.
- 9 10. Defendants have a total of forty-eight (48) months from September 21,
10 2022, to tender the Maximum Settlement Amount ("Payment Period").
- 11 11. The Effective Date of the settlement shall be thirty (30) days from the date
12 of this Order. The Effective Date shall also constitute Defendants' Initial
13 Payment Date.
- 14 12. Defendants' Initial Payment will be calculated by dividing the Maximum
15 Settlement Amount by the number of months remaining in the Payment
16 Period as of the Initial Payment Date. For example, if the Initial Payment
17 Date is six (6) months after the parties executed the Agreement, then forty-
18 two (42) months remain in the Payment Period and thus, the Initial
19 Payment will be at least $\$1,750,000.00/42 \text{ months} = \$41,666.67$. If the
20 Initial Payment Date falls on a date that does not constitute a complete
21 month, then the time will be rounded forward or back to form a complete
22 month in whichever direction is shorter.
- 23 13. Beginning the month following the Initial Payment, Defendants will make
24 Monthly Payments on or before the 10th day of each month until they have
25 fully paid the Maximum Settlement Amount.
- 26 14. Defendants will be entitled to an Accelerated Payment Discount if they
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1 accelerate their payments and satisfy their obligation to pay the Maximum
2 Settlement Amount by: (i) June 1, 2023, a \$105,000 Accelerated Payment
3 Discount; and (ii) June 1, 2024, a \$52,500 Accelerated Payment Discount.
4 If an Accelerated Payment Discount is applied, it shall be applied
5 proportionately to all amounts except for the Enhancement Payment and
6 Administrative Costs.

7 15. The Settlement Administrator will issue the first round of Settlement
8 Checks to Settlement Class Members on a pro rata basis within 14 days of
9 Defendants' third payment into the Qualified Settlement Fund. The
10 Settlement Administrator will issue the second round of Settlement Checks
11 to Settlement Class Members on a pro rata basis within 14 days of
12 Defendants' sixth payment. Thereafter, the Settlement Administrator will
13 issue Settlement Checks to Settlement Class Members on a pro rata basis
14 at the end of the second quarter of each subsequent year of the Payment
15 Period, subject to the Accelerated Payment Discount.

16 16. The Settlement Administrator will pay Class Counsel their Attorneys' Fees
17 and Costs on a pro rata basis at the same times that the payments are made
18 to Settlement Class Members.

19 17. The Settlement Administrator will pay Plaintiff his Enhancement Payment
20 at the same time that the first round of checks are mailed to Settlement
21 Class Members.

22 18. While any balance of the Maximum Settlement Amount remains
23 outstanding, Defendants will not pay management fees to its parent
24 corporation in excess of \$102,750.00 per month, or in an amount that
25 would reduce available cash, after the Monthly Settlement Payment, to less
26 than zero, whichever is less; will defer any distributions to Larry Browne
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1 and/or to other Diligent officers or companies; and will not change
2 accounting practices.

3 19. Upon request, Defendants will provide Class Counsel with reasonably
4 detailed profit and loss statements and balance sheets on a quarterly basis
5 beginning in the first quarter following execution of the Settlement
6 Agreement and on a quarterly basis thereafter; as well as annual state and
7 federal tax filings during the period in which any balance of the Maximum
8 Settlement Amount is owed. Class Counsel and/or their expert(s) or
9 consultant(s) will have a right to conduct a commercially reasonable audit
10 of financial statements of Defendants on a quarterly basis beginning in the
11 first quarter following execution of the Settlement Agreement at Class
12 Counsel's expense. Such audits shall be conducted at a mutually agreed
13 upon date and time, and such audits shall not unreasonably interfere with
14 Defendants' regular business operations.

15 20. Upon the Effective Date and upon Defendants' complete and timely
16 payment of the Maximum Settlement Amount, all Settlement Class
17 Members who have not opted out will release Defendants and the Released
18 Parties from all claims that were pled in the Complaint in the Action, or
19 which could have been pled in any of the Complaints in the Action based
20 on the factual allegations therein, that arose between November 2, 2014
21 and December 6, 2022, and that relate to Settlement Class Members' work
22 as delivery drivers with Defendants.

23 21. Upon entry of this Order and Judgment, the Parties shall effectuate all
24 terms of the Settlement Agreement based on the provisions and timelines
25 set forth in the Settlement Agreement.

26 22. In the event of Defendants' uncured breach of Sections 3.1.2 and/or 3.2.1
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1 of the Settlement Agreement and following ten (10) business days' written
2 notice to Defendants' counsel, Defendants shall be obligated to make an
3 immediate payment to Plaintiffs of \$1,750,000 less any payments already
4 made by Defendants, plus interest at a rate of 10% per year from the date
5 of the first violation, all as provided in the Settlement Agreement.
6 Enforcement of this portion of the judgment shall be stayed while
7 Defendants are timely making payments, and the Court retains jurisdiction
8 to lift the stay upon a showing that Defendants have been provided written
9 notice of breach and have failed to cure said breach within 10 business
10 days thereof.

11 23. Judgment is hereby entered consistent with the Settlement Agreement.

12 24. Without affecting the finality of this Order, the Court retains jurisdiction
13 over the action and the parties to construe, interpret, implement, and
14 enforce the Settlement Agreement and this Order and Judgment.

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16 **IT IS SO ORDERED.**

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18 Dated: March 14, 2023



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HON. GEORGE H. WU, U.S. District Judge